(2)

No. 89-885

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

AIR-SEA FORWARDERS, INC.,
a California corporation,
Petitioner,
vs.
AIR ASIA COMPANY, LTD., a limited corporation of the Republic of China;
E-SYSTEMS, INC., a Delaware corporation,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI FROM THE ORDER AND AMENDED OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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29 pp

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I

STATEMENT OF THE CASE

A. Course of Proceedings.

Trial commenced in March of 1986, based on plaintiff's Second Amended Complaint. The Second Amended Complaint contained 16 causes of action. The court ordered bifurcation of the liability and damages phases of trial.

The district court granted defendants' motion for directed verdict on some of the causes of action, and

plaintiff's remaining claims were then submitted to the jury in the form of Special Verdicts A through J. The jury rendered verdicts for the plaintiff on Special Verdicts A through C and rendered verdicts for the defendants on claims D through J. The three Special Verdicts returned by the jury in favor of plaintiff[1] were as follows:

1. In Special Verdict A, the jury determined that there was an oral agreement in 1956, that it contained a provision that plaintiff could be terminated only for good cause, and that defendants breached that agreement by terminating plaintiff in July, 1981.
2. In Special Verdict B, the jury determined that defendants denied the existence of that 1956 oral agreement in bad faith and without reasonable cause.
3. In Special Verdict C, the jury determined that the 1956 oral agreement contained a provision for attorney's fees.

The trial then proceeded to a damages phase and the jury returned a verdict for plaintiff on the basic breach of contract claim in the amount of $216,151.50 in compensatory damages and $6,000,000 in punitive damages on the claim for bad faith denial of contract.

Defendants then filed their post-trial motions. The district court ordered a new trial on Special Verdict A under Rule 59 of the Federal Rules of Civil Procedure

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[1] Appendix A hereto.

and ordered judgments n.o.v. for defendants on Special Verdicts B and C. (Appendix C to Petition).

By separate order, the district court also conditionally ordered new trials under Rule 50(c) of the Federal Rules of Civil Procedure with respect to Special Verdicts B and C, on the grounds set forth in its prior order and on the additional grounds that the damages were grossly excessive. (Appendix E to Petition).

On December 4, 1986, the court entered its judgement pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, rendering judgment for the defendants on all of plaintiff's jury claims (other than the claim submitted to the jury as Special Verdict A). (Appendix D to Petition).

Plaintiff appealed. The Ninth Circuit held that it was without jurisdiction to review the new trial order on Special Verdict A. With respect to Special Verdicts B and C, the Ninth Circuit reversed the district court's entry of judgments n.o.v. on those two claims, but affirmed the district court's conditional order for new trial on both claims. (Appendix A to Petition).

By order of September 5, 1989, the Ninth Circuit denied petitioner's petition for rehearing and its suggestion for rehearing en banc. Plaintiff failed to move for a stay of the mandate pending application for a Writ of Certiorari within the time allowed by Rule 41 of the Federal Rules of Appellate Procedure. The Ninth Circuit then issued its mandate to the district court for a retrial on all three claims. The district court now has jurisdiction to retry all three of these related issues.

In its Petition, petitioner (plaintiff) seeks Supreme Court review of the Ninth Circuit's decision affirming the conditional new trial orders on Special Verdicts B and C. (Petition, p. 4).

B. Statement of Facts.

In its inception in the early fifties, Air Asia (and predecessor companies) was one of a group of companies indirectly owned by the CIA. Air Asia's function was to operate an aircraft repair and maintenance facility on Taiwan to support the operations of the other companies, primarily Air America, which owned a large fleet of aircraft. In order to supply its maintenance facilities on Taiwan, Air Asia purchased aircraft goods and material in the United States for shipment to Taiwan. These materials and goods were purchased by a procurement office in Burbank, California where they were assembled, packed for overseas shipment and then forwarded to Taiwan. Under written contract with Air Asia (Exhibit 144), plaintiff Air-Sea Forwarders provided freight forwarding services (services connected with export shipments) and customshouse brokers services (services connected with import shipments.)

Prior to 1957, Air Asia did its own export packing of the goods. The State of California asserted that the goods passing through Burbank were subject to state sales and use tax. Section 6387 of the California Revenue and Taxation Code was enacted in 1955. It provided that Air Asia's goods would be exempt from California sales tax if, instead of packing the goods themselves, the goods were delivered to a "forwarding agent, export packer, or other person engaged in the business of preparing goods for export or arranging for their exportation."

On January 28, 1957, Air Asia entered into a written packing agreement with plaintiff whereby plaintiff would pack the goods for export. The agreement was a cost reimbursable type contract, providing that plaintiff would be reimbursed for its labor and other costs

associated with the packing plus receive a monthly fixed fee of $230 per month. (Exhibit 187). At the same time, Air Asia entered into a lease whereby it leased to plaintiff a portion of its warehouse space for plaintiff to use for the packing operation. (Exhibit 189). These costs were then reimbursed to plaintiff under the cost reimbursable agreement. Both agreements provided for termination by either party on 30 days written notice.

In 1963, Air Asia moved its warehouse from Burbank to North Hollywood, California. When it did so, it entered into a new packing agreement and a new lease agreement with plaintiff, on essentially the same terms contained in the packing agreement and lease of January 28, 1957. (Exhibits 1, 30).

Although the auditors for the State Board of Equalization initially questioned the degree of control that Air Asia exercised over the packing operation, the auditors for the State Board of Equalization ultimately concluded that the arrangement with plaintiff for overseas packing of Air Asia goods did meet with the requirements of Section 6387 of the Revenue and Taxation Code. (Exhibits 107, 75, 200, 205 and 109).

On August 1, 1966, Air Asia entered into a new agreement with plaintiff Air-Sea Forwarders relating to freight forwarding and customshouse brokers services (the "1966 Written Agreement"). (Exhibit 2). The 1966 Written Agreement described the services to be performed by plaintiff and the rate to be paid for these services. Paragraph 10 contained the termination provisions, which provided that the agreement would continue from year to year thereafter unless written notice of termination was given 30 days prior to the anniversary date, *i.e.*, 30 days prior to August 1 of each year. Paragraph 12 expressly provided that the written agreement was the entire and only agreement respecting the subject

matter thereof and that any representation, promise or condition in connection therewith not incorporated therein would not be binding upon either party.

The trial record shows that there were four years of negotiations leading up to the 1966 written agreement. Many documents relating to the negotiations were entered into evidence by defendants, including drafts of agreements submitted by both sides and multiple page memoranda and letters detailing and discussing changes desired by both sides. (RT 1091-1140). (Exhibits 1035, 1036, 1046, 26, 39, 1049, 1052, 1107, 1053, 1054, 1055, 1056, 40, 1058, 1108, 1059, 1060, 1062, 43, 1064, 1068, 1069, 1109 and 2.) Every provision in the contract was extensively negotiated. This included the provision that provided, "This is the entire and only agreement between the parties."

The termination provisions in the 1966 Written Agreement were specifically negotiated. In 1964, Jerry Fink (an Air Asia employee) wrote a memorandum discussing a change proposed by Mr. Rautenberg that termination be only by mutual agreement. The memorandum states that Air Asia wanted to be able to terminate "unilaterally" to preserve "maximum flexibility." (Exhibit 26, last page).

In 1965, the parties agreed upon and initialed a form of the contract known as "65-57." (Exhibit 1052). Mr. Rautenberg then refused to sign Contract 65-57 because he wanted more changes. Additional changes were negotiated, included a change to paragraph 10, the termination provision. Comparison of Exhibit 1052 with the 1966 Written Agreement ultimately signed (Exhibit 2) shows a further change in the termination provisions contained in paragraph 10.

Not only were the termination provisions specifically and extensively negotiated, the uncontradicted testimony

at trial was that Mr. Rautenberg specifically requested but was denied a provision that termination be only for good cause. (RT 1103-1105, 1136-1138).

Mr. Rautenberg testified that he did not tell anyone during the negotiations for the 1966 written agreement of his contention (raised many years later) that he had a prior oral agreement that controlled with respect to termination. (RT 529-530, 538-539).

By 1975, the Vietnam war was over and United States Senate hearings had already disclosed the true ownership of Air Asia and the related companies. The government then attempted to dispose of these proprietaries and their assets.

In 1975, E-Systems acquired all of the outstanding stock of Air Asia. Air Asia owned a modern aircraft repair and maintenance facility on Taiwan. E-Systems chose not to purchase the assets of related companies (such as the airplanes of Air America), but was interested only in the aircraft maintenance facility of Air Asia. From the time of its acquisition in 1975 through the time of trial, Air Asia was a wholly owned subsidiary of E-Systems.

After its acquisition, events contributed to a decline in the business of Air Asia. President Nixon recognized Red China, which meant that all of the U.S. military aircraft on Taiwan had to be removed. Air Asia lost all of its U.S. Government contract work. (RT at 1210-1211).

In order to consolidate operations and effect economies, the procurement and accounts payable functions previously performed at the North Hollywood office of Air Asia were eliminated, and these functions were assumed by the Greenville Division of E-Systems, located in Greenville, Texas. Further studies were

conducted to determine how to further consolidate operations and to explore other methods to effect economies. (RT 1209-1211).

Late in 1980 and early in 1981, proposals were solicited from other freight forwarders to do the packing and freight forwarding operations. In January of 1981, Don Russell, Divisional Vice President of E-Systems, traveled to Los Angeles to meet with Mr. Rautenberg and advise him of these plans and to give Mr. Rautenberg an opportunity to submit a proposal. Mr. Rautenberg was advised that other forwarders were being solicited for proposals. Mr. Rautenberg submitted various proposals along with a number of other forwarders. (RT 1211-1214, 1221).

After comparison of the various proposals received, Air Asia selected another forwarder on the basis of lower costs. On July 27, 1981, E.K. Gibson (Director of Materiel for Air Asia) personally delivered to Mr. Rautenberg a written notice terminating his services, effective August 27, 1981. (RT 1330-1332).

Because the 1966 Written Agreement required written notice of termination 30 days prior to the anniversary date, *i.e.*, August 1, the notice of July 27, 1981 was 27 days late and the contract would, by its terms, be automatically renewed for another year.

On August 3, 1981, Mr. Rautenberg sent a telex to Robert Mitchell, Senior Vice President of E-Systems to protest the termination. In the telex, Mr. Rautenberg stated that the 1966 Written Agreement was "very much in effect," that the 30 day notice termination provisions of that agreement controlled, and that the contract therefore remained in effect for another full year. (Exhibit 18).

On August 12, 1981, plaintiff commenced this action. Its initial complaint alleged the making of the 1966 Written Agreement and claimed breach of the termination provisions thereof on the grounds that the termination notice was not given 30 days prior to August 1. Plaintiff claimed $45,000 worth of lost profits for that one year period. No mention was made of any oral agreement that he could only be terminated for good cause. (CT 1).

On May 5, 1982, plaintiff filed its First Amended Complaint alleging, for the first time, that there was a 1956 oral agreement that superseded the terms of the 1966 Written Agreement, and that such alleged 1956 oral agreement provided that plaintiff could not be terminated except upon good cause. (CT 15). Plaintiff had made no such contention during the bidding period in January through July of 1981 nor in its correspondence or original complaint. This contention of an alleged oral agreement was raised for the first time in its First Amended Complaint. In addition to seeking $500,000 for breach of the alleged 1956 oral agreement, plaintiff also alleged that the 1966 Written Agreement was a valid agreement but now increased its demand for damages for breach of the 1966 Written Agreement to $150,000. The First Amended Complaint also added a number of other causes of action.

In 1985, plaintiff filed its Second Amended Complaint. The Second Amended Complaint now deleted entirely any reference to the 1966 Written Agreement, alleging instead that the written agreements were sham. Plaintiff also increased its prayer for damages for breach of the alleged 1956 oral agreement to $1,000,000. (CT 156).

II

SUMMARY OF ARGUMENT

The decision in this case is not in conflict with the decisions of other Federal Courts of Appeal on this matter. In ruling on a motion for new trial, the trial court can weigh the evidence and assess the credibility of witnesses. Thus the requirements of Rule 17 of the Rules of the Supreme Court are not met.

Additionally, on the facts of this case, Special Verdicts B and C cannot be reinstated, as petitioner requests. A new trial was also granted on Special Verdict A, and that verdict is not the subject of this petition. Special Verdict A was the one that determined that there was a 1956 oral agreement. Judgment cannot be entered on petitioner's claims that there was a bad faith denial of the existence of the oral agreement and that the oral agreement contained a provision for attorney's fees because there has not yet been a determination that there was an oral agreement.

Finally, petitioner only addresses one of the grounds given by the trial court in granting the conditional new trial orders. The order for conditional new trial was also granted on the grounds that the damages were grossly excessive.

III

ARGUMENT

A. The Decision in This Case is Not in Conflict with the Decisions of Other Federal Courts of Appeal on This Matter.

In this case, in affirming the district court's grant of the motions for conditional new trials, the Ninth Circuit held as follows:

1. In ruling on a motion for a new trial, the judge can weigh the evidence and assess the credibility of witnesses, and need not view the evidence from the perspective most favorable to the prevailing party. (citing, *inter alia, Landes Construction Company, Inc. v. Royal Bank of Canada*, 833 F.2d 1365, 1371 (9th Cir. 1987));
2. We review an order granting or denying a motion for new trial for an abuse of discretion, although the district court should only enter an order granting a new trial based upon the insufficiency of the evidence if the verdict is against the great weight of the evidence. (citing *Venegas v. Wagner*, 831 F.2d 1514, 1519 (9th Cir. 1987));
3. For purposes of ruling on the motion for new trial, the district court was free to reject testimony which it found incredible, and the district court's credibility findings are reviewed for

> clear error (citing *Landes, supra*, and *Cooling Systems and Flexibles, Inc. v. Stuart Radiator, Inc.*, 777 F.2d 485, 487 (9th Cir. 1985)).

In the instant case, the Ninth Circuit did not hold that the District Court had "unfettered discretion" or "unlimited discretion" to reject the jury's credibility choices (as asserted by petitioner at 17, 20, 22 and 24 of its Petition for Writ of Certiorari).

The *Landes* case makes the following distinctions which are useful to an analysis of the Petition. In ruling on a motion for judgment n.o.v., neither the trial court nor the appeals court may weigh the evidence or assess the credibility of witnesses. In ruling on a motion for new trial, the trial court can weigh the evidence and assess the credibility of witnesses. On review of the trial court's order, the appeals court may not weigh evidence or assess the credibility of witnesses. When the trial court grants a new trial on the grounds that the verdict is against the clear weight of the evidence, the appeals court reviews the trial court's decision for "abuse of discretion." (833 F.2d at 1371-1372).

The *Landes* opinion then goes on to discuss the role of the trial court in weighing the evidence and assessing the credibility of witnesses. This is not a usurpation of trial by jury. The power to set aside the verdict has long been regarded as an integral part of trial by jury. On the other hand, a decent respect for the role of the jury suggests that the Judge should accept the findings of the jury in most cases, regardless of his own doubts. The opinion then states (833 F.2d at 1371-1372):

> "Probably all that the judge can do is balance these conflicting principles in the light of the facts of the particular case. If, having given full respect to the jury's findings, the Judge on

> the entire evidence is left with the definite and firm conviction that a mistake has been committed, it is to be expected that he will grant a new trial."

Plaintiff cites no cases from other circuits which are in conflict with the above holdings. Petitioner does cite cases in which the appeals court commends the trial court for deferring to the findings of the jury. Other cases cited by petitioner hold that the trial court abused its discretion on the facts of that particular case.

The Third Circuit case of *Lind v. Schenley Industries, Inc.*, 278 F.2d 79 (3rd Cir. 1960) *cert. denied,* 364 U.S. 835 (1960), cited by petitioner, did not hold that credibility can never be considered by the judge when weighing all of the evidence. The court in *Lind* held that the trial court abused its discretion on the facts of that case.

The Ninth Circuit case of *Digidyne Corp. v. Data General Corp.*, 734 F.2d 1336, 1347 (9th Cir. 1984), *cert. denied,* 473 U.S. 908 (1985), is cited by the petitioner, for the following:

> "A motion for a new trial may be granted on this ground only if the verdict is against the 'great weight' of the evidence, (citations), or 'it is quite clear that the jury has reached a seriously erroneous result' (citations)."

This is not inconsistent with the holdings in the instant case.

Petitioner cites the D.C. Circuit case of *Vander Zee v. Karabatsos*, 589 F.2d 723 (D.C. Cir. 1978), *cert. denied,* 441 U.S. 962 (1979) for the language quoted at page 729 that "The trial court's contrary view of the credibility of the witnesses does not justify the granting of a new

trial." When viewed in the context of the entire opinion, it is clear that the circuit court was referring to the facts of that particular case. It is not authority for the proposition that the trial court, in determining whether the verdict was against the great weight of the evidence, may never consider credibility.

The Eleventh Circuit case of *Fondren v. Allstate Ins. Co.*, 790 F.2d 1533 (11th Cir. 1986), cited by petitioner, stated (at 1534):

> "The seventh amendment does not, of course, foreclose all scrutiny of a jury's verdict. After reviewing the record before us, however, we conclude *that in this case* the court improperly substituted its view of the evidence for that of the jury, . . ." (emphasis added).

In the Eleventh Circuit case of *J & H Auto Trim Co. v. Bellefonte Ins. Co.*, 677 F.2d 1365 (11th Cir. 1982), cited by petitioner, the court did state that it was the "jury's function" to assess credibility. However, the appeals court did not hold that the trial judge could not also consider credibility. The court held that the proper standard for the trial judge in ruling on the jury's verdict was whether it was against the great weight of the evidence. The appellate court then reviewed the factual record at trial and concluded that the Judge, in that case, did not apply the correct standard.

The Eleventh Circuit case of *Williams v. City of Valdosta*, 689 F.2d 964 (11th Cir. 1982), cited by petitioner, made it clear that the standard of review is still "abuse of discretion." The court stated (689 F.2d at 974, n.8):

> "This is not to say that in cases such as this we apply a standard other than abuse of discretion. Rather, when the trial judge dismisses a jury verdict *solely* because in his view the evidence was insufficient, it is *more likely* that he has abused his discretion." (emphasis added).

The Ninth Circuit Opinion in *Venegas v. Wagner*, 831 F.2d 1514 (9th Cir. 1987), cited by petitioner, did commend the district court for restraining itself from substitution of its own conclusion for that of the jury. However, the court did not rule that a district court can never assess credibility in ruling on a motion for a new trial. The opinion reaffirms its prior holdings that a motion for a new trial may be granted if the verdict is against the great weight of the evidence or if it is quite clear that the jury has reached a seriously erroneous result, and that appellate review of the grant or denial of a motion for a new trial is based on the standard of abuse of discretion.

Petitioner incorrectly states (p. 23), "It was undisputed that the parties did business together without any valid written agreement of any kind for many years." That is a blatant misstatement of the record. At trial, the defendants asserted that written agreements between the parties in 1954, 1957, 1963 and 1966 were valid, and that these written agreements (Exhibits 1, 2, 30, 144, 187 and 189) controlled the relationship, not the alleged oral agreement of 1956. Petitioner wants this court to review the lengthy record at trial and resolve conflicting evidence to determine whether the Ninth Circuit correctly applied the standard of review. Quite clearly, this is not the function of a Petition for Writ of Certiorari. Rule 17 of the Rules of the Supreme Court.

B. Additionally, On the Facts of This Case, Special Verdicts B and C Cannot be Reinstated Because There has Not Yet Been a Determination That the Oral Agreement Even Existed.

The three special verdicts returned by the jury in favor of plaintiff at trial (Appendix A hereto) were as follows:

(a) Special Verdict A was whether there was an oral agreement in 1956, whether the oral agreement contained a provision that plaintiff could be terminated only for good cause, and whether defendants breached that agreement by terminating plaintiff in 1981;

(b) Special Verdict B was whether defendants denied the existence of that 1956 oral agreement in bad faith and without reasonable cause; and

(c) Special Verdict C was whether that 1956 oral agreement contained a provision for attorney's fees.

As previously discussed in "Course of Proceedings," the district court ordered a new trial on Special Verdict A, and the Ninth Circuit held that it was without jurisdiction to review that order.

With respect to Special Verdicts B and C, the Ninth Circuit affirmed the district court's conditional order for new trial on both claims.

There will now be a new trial on whether or not there was an oral agreement in 1956 that plaintiff could only

be terminated for good cause. The petitioner wants the Supreme Court to reinstate jury verdicts that the defendants denied the existence of that oral agreement in bad faith and that the oral agreement contained a provision for attorney's fees *prior to* any determination by a new jury as to whether or not there even was such an oral agreement.

In *Valente-Kritzer Video v. Pinckney*, 881 F.2d 772, 776 (9th Cir. 1989), also a diversity case applying California law, the Ninth Circuit acknowledged that, "As a necessary prerequisite to establishing a tortious breach, it is necessary to prove, as in the case of an ordinary breach, the existence of an enforceable agreement."

See also Kruse v. Bank of America, 202 Cal.App.3d 38, 59; 248 Cal.Rptr. 217 (1988), *cert. denied*, 109 S.Ct. 870 (1989). (Judgment for plaintiff reversed where there was no evidence to support the cause of action for bad faith denial of the existence of a contract because there was no contract.)

C. The Conditional New Trial Orders on Special Verdicts B and C Were Not Granted Solely on the Grounds of "Insufficiency of the Evidence."

Throughout its Petition, petitioner refers only to the standard that should be applied when a motion for new trial is based on insufficiency of the evidence.[2] No mention is made of the fact that the order for conditional

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[2] For example, at page 4 of the Petition, petitioner states "By affirming the conditional new trial orders, the Ninth Circuit misapplied the standard that when a motion for new trial is based on insufficiency of the evidence, the motions should not be granted unless the verdict is against the great weight of the evidence."

new trial was also based on the grounds of excessive damages. (Appendix E to Petition). The jury awarded plaintiff $6,000,000 in punitive damages on the claim that defendants denied the existence of the 1956 oral agreement in bad faith.

Plaintiff has sought no review before this Court on the grounds that this holding was incorrect or in conflict with the decisions of other courts of appeal. The petitioner chooses to ignore the alternate grounds upon which the trial court granted the conditional new trial order.

IV

CONCLUSION

We therefore respectfully request that the Petition for Writ of Certiorari be denied, on the grounds stated herein.

DATED: December 22, 1989

LAW OFFICES OF
JAMES R. JURECKA

By: JAMES R. JURECKA

Attorney for Respondents

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

AIR-SEA FORWARDERS, INC.,
a California corporation,
Plaintiff,
v.
AIR ASIA COMPANY, LIMITED,
a limited corporation of the Republic of China;
E-SYSTEMS, INC., a Delaware corporation,
Defendants.

No. CV 81-4103 RG

SPECIAL VERDICT

(1) Did plaintiff and defendant enter into an oral agreement in 1956 which governed their relationship?
√ Yes. ___ No.

If your answer is yes, please answer the next question.

If your answer is no, please sign and date this form and proceed to Part "D" and skip Parts "B" and "C".

(2) Did an oral contract between the parties contain a provision that plaintiff could be terminated as freight forwarder for defendant only for good cause? √ Yes.
___ No.

If your answer is yes, please answer next question. If no, please sign this form and go to Part B.

(3) At the time it was entered into, was the 1957 written packing agreement (Exhibit 187) intended to be a valid agreement between the parties with respect to the terms that are contained in that agreement? ___ Yes. √ No.

(4) At the time it was entered into, was the 1963 written packing agreement (Exhibit 1) intended to be a valid agreement between the parties with respect to the terms that are contained in that agreement? ___ Yes. √ No.

(5) At the time it was entered into, was the 1966 written freight forwarding agreement (Exhibit 2) intended to be a valid agreement between the parties with respect to all the terms that are included in that agreement? √ Yes. ___ No.

(6) At the time it was entered into, did the parties intend that the 1966 written freight forwarding agreement was the entire and only agreement between the parties respecting freight forwarding and customs house brokers services? √ Yes. ___ No.

(7) Did the defendants breach the oral agreement by discharging the plaintiff in July, 1981? √ Yes. ___ No.

If your answer is yes, please answer next question. If no, please sign this form and go to Form "B".

(8) Did defendants' termination of plaintiff without good cause result in some sort of damage to plaintiff's business? √ Yes. ___ No.

/s/ Mike P. Pontin
FOREPERSON

DATED: 4/21/86

SPECIAL VERDICT FORM B.

Have defendants denied the existence of the 1956 oral agreement without reasonable cause for denying it? √ Yes. ___ No.

If your answer is yes, please answer the next question.

Did defendants act dishonestly in denying its existence, that is, did defendants actually believe that the 1956 oral agreement existed? √ Yes. ___ No.

If your answer is yes, please answer the next question.

Did defendants' bad faith denial of the oral contract cause damage to ASF's business? √ Yes. ___ No.

/s/ Mike P. Pontin
FOREPERSON

DATED: 4/22/86

SPECIAL VERDICT FORM C.

As part of the oral 1956 Agreement, did defendants agree to pay ASF's attorneys' fees in all matters arising out of the packing plant operation? √ Yes. ___ No.

If your answer is Yes, please answer the next question.

If your answer is No, please sign and date this form.

Have defendants breached the contract by not paying ASF's attorneys' fees in connection with this lawsuit? √ Yes. ___ No.

Please sign and date this form.

/s/ Mike P. Pontin
FOREPERSON

DATED: 4/23/86

No. 89-885

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1989

AIR-SEA FORWARDERS, INC., a California corporation,
Petitioner,

vs.

AIR ASIA COMPANY, LTD., a limited corporation of the Republic of China; E-SYSTEMS, INC., a Delaware corporation,
Respondents.

STATE OF CALIFORNIA)
) ss:
COUNTY OF LOS ANGELES)

Donald A. Johnson, being first duly sworn, deposes and says: I am a citizen of the United States and a resident of or employed in the county aforesaid. I am over the age of 18 years and not a party to the said action. My business address is 3550 Wilshire Boulevard, Suite 916, Los Angeles, California 90010. On this date, I served the within BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI on the interested parties in said action by placing three true copies thereof with first-class postage fully prepaid, in the United States post office mailbox at Los Angeles, California, in sealed envelopes addressed as follows:

MAURICE C. INMAN, JR.
INMAN, WEISZ & STEINBERG
Penthouse Suite
9720 Wilshire Boulevard
Beverly Hills, CA 90212

That affiant makes this service, for JAMES R. JURECKA, Counsel of Record, LAW OFFICES JAMES R. JURECKA, Attorney for Respondents herein, and that to the best of my knowledge all the persons required to be served in said action have been served.

Donald A. Johnson

On December 26, 1989, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Donald A. Johnson, known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

Witness my hand and official seal.

OFFICIAL SEAL
Theodore Matsuo Wilden
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
My comm. expires NOV 30, 1990

Theodore M. Wilden
Notary Public in and for said county and state